

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 3031 OF 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

Whether this case involves a substantial question of
4 law as to the interpretation of the Constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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**A.V. THOMAS, THROUGH POWER OF
ATTORNEY - AKOT VERGHESE THOMAS & ANR. - Petitioner(s)**

Versus

STATE OF GUJARAT & ORS. - Respondent(s)

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Appearance :

Shri Nandish Chudgar for M/s. Nanavati Associates for Petitioner(s).

Ms. Nisha Parikh, Assistant Government Pleader for Respondent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/04/2007

ORAL JUDGMENT

The parties are heard.

2. The facts necessary for disposal of the case are that the father of the petitioners purchased certain lands on 11th June, 1971 and an entry was made in the revenue records on 1st May, 1974. He also purchased part of land of Survey No.81 adjacent to the land of Survey No.80 by a registered Sale Deed. Certain entries were again made and thereafter, the entry was confirmed on 20th June, 1975. On 29th March, 1979, the petitioners purchased a parcel of land bearing Survey No.72/1 adjacent to Survey Nos.80 and 81 under a registered Sale Deed. Certain entries were again made and the relevant extracts of Village Form No.6 are produced before this Court. On 5th November, 1988, the District Panchayat, Jamnagar passed necessary orders converting the agricultural land of Survey Nos.72/1 and 72/3 into non-agricultural lands for residential purpose. On 10th September, 1989, almost after a period of fifteen years from the first sale and after a period of ten years of the purchase by the petitioners, the Deputy Collector issued a notice to the petitioners to show cause that why the entries made in their favour be not cancelled. The petitioners filed their reply and submitted that *suo motu* revisional powers can be exercised within a reasonable time and not after a lapse of ten to fifteen years. On 5th December, 1989, the Deputy Collector held that the transfer dated 17th June, 1971 was in violation of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948; the appeal against the said order was dismissed by the Collector on 5th July, 1991, but, the revision challenging the orders passed by the subordinate Courts was allowed by the Deputy Secretary *vide* his order dated 19th August, 1993; the said revisional Authority set aside the order dated 5th December, 1989 passed by the Deputy collector and the order dated 5th July, 1991 passed by the Collector, holding *inter alia* that the Deputy Collector had no jurisdiction to issue such show cause notice. It, accordingly, set aside both the orders and directed the Collector to take appropriate steps in accordance with law. The records

show that after the said remand, the Collector, Jamnagar *vide* his notice dated 2nd September, 1993, required the petitioners to show cause that why the entries made in relation to the land in dispute be not cancelled. The petitioners again appeared before the Collector and submitted that such powers could not be exercised after a long lapse of time and as the petitioners were *bona fide* agriculturists, such powers could not be exercised. The Collector did not agree with the submissions and defences raised by the petitioners and cancelled the entries. The revision against the said order in SRD/HKP/JNR/Revision/1/1994 was dismissed by the Deputy Secretary (Appeals), Revenue Department on 31st May, 1995. Therefore, the petitioners are before this Court.

3. Shri Chudgar, learned Counsel for the petitioners, placing reliance upon a judgement of the Apex Court in the matter of ***State of Gujarat vs. Patel Raghav Natha & Ors.*** [1969 GLR 992], and other judgements following the said judgement, submitted that the revisional powers should be exercised by the authority within reasonable time and no authority would be competent to exercise the powers after a long lapse of time, especially, when the parties are sure and certain that their rights are crystallised and settled.

4. Ms. Nisha Parikh, learned Counsel for the State, on the other hand submits that present is a case where after learning about the illegalities, the proceedings were initiated and under the orders of remand, the Collector acquired jurisdiction to proceed further with the matter. She submits that the orders are absolutely justified and do not call for any interference.

5. In the matter of ***Patel Raghav Natha*** (*supra*), the Apex Court has observed that under Section 211 of the Bombay Land Revenue

Code, no period of limitation is prescribed, but, it would be plain that the power must be exercised within reasonable time and the length of reasonable time must be determined by the facts of the case and nature of the order. The Apex Court also observed that if, according to Section 65 of the Bombay Land Revenue Code, a period of three months is considered good and sufficient for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted, then, in such case, the action should be taken within reasonable time.

6. Once the Deputy Secretary (Appeals), Revenue Department set aside the order dated 5th December, 1989 passed by the Deputy Collector and the order dated 5th July, 1991 passed by the Collector in appeal, then, the said matter came to an end so far as it related to the show cause notice issued on 10th September, 1989.

7. The Collector obviously thought under the order passed by the Deputy Secretary (Appeals), Revenue Department that he would be entitled to exercise the *suo motu* revisional powers. The order passed by the Deputy Secretary (Appeals) simply says that the case is remanded to the board of the Collector for starting the proceedings afresh. If the orders passed by the subordinate Courts were already quashed and fresh authority was conferred upon the Collector to take the matter afresh, then, in such case, the proceedings would be deemed to have commenced from the date of the notice, which, undisputedly, is 2nd September, 1993.

8. From the first sale of 11th June, 1971, the length/distance of time in issuing notice would be twenty two years, from the second purchase by the petitioners, it would be eighteen years and from the last

purchase, it would be almost about fourteen years. In view of the various judgements of this Court, the powers of revision cannot be exercised after such a long lapse of time.

9. Taking into consideration that the entry made in the years 1974 and 1975 was sought to be revised in the year 1993, I must hold that the powers have been illegally exercised by the Collector.

10. The order passed by the Collector in Remand Case No.75/1993 on 7th January, 1994 and the order dated 31st May, 1995 passed by the Deputy Secretary (Appeals) in No. SRD/HKP/JNR/1/1994 deserve to and are, accordingly, quashed. The petition is allowed. Rule is made absolute. No costs.

[R.S.Garg, J.]

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